IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO.2323 OF 2001
IN
SUIT NO.3365 OF 2001

Tariq Jagmag Plaintiff

versus

Yasmin Jagmag and others Defendants

Mr.Mahendra Shah with S.P.Bhandary i/by Fedral Rashmikant for plaintiff.

Ms.Suman Jain for defendants 4 and 5.

Mr.M.D.Angal for defendants 1 and 2.

Ms.Shashikala Kotian i/by Mr.Y.N.Adhia for defendant no.3.

CORAM : S.C.DHARMADHIKARI, J.

DATE : 4th July 2005

PC :

1. By consent of Shri Shah - learned senior counsel appearing for plaintiff and Shri Angal appearing for defendants 1 and 2 as well as Ms.Jain for defendants 4 and 5, following order is passed.

2. It is agreed by parties that there are lying 10,800 shares of defendant no.3 of face value of

Re.1/- each in the names of (i) Yasmin Adil Kadiani (defendant no.1), (ii) Tariq Adil Kadiani (plaintiff), (iii) Taher Jiwaji Kadiani (defendant no.4) and Rukkia Taher Kadiani (defendant no.5) under Folio No.2533185 and 1860 shares of the face value of Re.1/- each under Folio No.2916247 in the name of deceased Adil Kadiani with the third defendant company.

3. A sum of Rs.64,800/- being the value of 10,800 Bonus Debentures issued by defendant no.3 of the face value of Rs.6/0 each, redeemed on 1st January 2005 standing in the names of (i) Yasmin Adil Kadiani (defendant no.1), (ii) Tariq Adil Kadiani (plaintiff, (iii) Taher Jiwaji Kadiani (defendant no.4) and Rukkia Taher Kadiani (defendant no.5) with accrued interest of Rs.5,848/- and Rs.2,940/- upto December 31st, 2004 is lying with the defendant no.3 as stated in the annexure to letter dated 16th June 2005 of M/s.Adhia & Adhia, Advocates for defendant no.3 company. A copy whereof is hereto annexed as Annexure-A.

4. A sum of Rs.11,160/- being the value of 1860 bonus debentures issued by the defendant no.3 of the face value of Rs.6/- each in the name of the

deceased Adil Kadiani redeemed on 1st January 2005 and interest thereon of Rs.1,007/- and Rs.506/- upto December, 2004 is lying with the defendant no.3 company as stated in the aforesaid annexure to letter dated 16th June, 2005 of M/s.Adhia & Adhia.

5. The Dividends declared as final or interim dividends between 28th June 2002 and 27th June 2005 aggregating to Rs.2,15,179/- for the aforesaid 10,800 shares under Folio No.2533185 mentioned at item Nos.33 to 40 in the annexure to the said letter dated 16th June, 2005 are lying with the defendant no.3 company.

6. The Dividends declared as final or interim dividends between 28th June 2002 and 27th June 2005 aggregating to Rs.37,059/- for the aforesaid 1860 shares under Folio No.2916247 mentioned at item Nos.11 to 17 and item no.40 in the annexure to the said letter dated 15th June 2005 are lying with the defendant no.3 company.

7. It is further agreed that an amount is lying to the credit of Public Provident Fund Account No.41174 (New No.908143) in the name of the deceased with State Bank of India, Mumbai Main

Branch payable to the estate of the said deceased.

8. It is hereby ordered that the Court Receiver take possession of the aforesaid 12660 shares mentioned in item no.2 above together with unpaid Dividends thereon lying with the 3rd Defendant company and amounts of principal value and interest being the redeemed value of 12660 debentures mentioned in item nos.3 and 4 above.

9. Court Receiver is hereby appointed with all powers under Order XL, Rule 1 of the Civil Procedure Code of items mentioned in paragraphs 2 to 6 above and of all future dividends, and other rights and entitlements that may be declared by the 3rd defendant company in respect of the aforesaid 12660 shares under Folio Nos.2533185 and 2196247.

10. Court Receiver is hereby appointed also of the dividends mentioned in the annexure to the said letter dated 16th June 2005 from M/s.Adhia & Adhia which are so far unpaid or unclaimed in respect of the shares mentioned in Folio No.2533185 and the dividends which are so far unpaid and unclaimed in respect of shares

mentioned in Folio No.2916247 inclusive of the dividends listed in the annexure to the said letter dated 16th June 2005.

11. It is contended by Mr.Angal that insofar as the sums lying to the credit of the deceased Adil Kadiani in PPF Account (Old) No41174 (new No.908143) is concerned, that amount has already been recovered by defendants 1 and 2. He states that the details as to when the said amount was received and/or recovered would be furnished to the Court Receiver by him within a period of four weeks from today. Needless to state that the copy of the statement/details forwarded to the Court Receiver in this behalf would also be forwarded to the plaintiff's advocate within a period of one week from the date of filing of the same with the Court Receiver.

12. It is further agreed that insofar as 1583 shares belonging to the estate are concerned, the said shares would be retained by the Court Receiver upon de-materialisation and the Court Receiver would also recover the dividends and other benefits in that behalf. This direction is issued because plaintiff claims that they are part of the estate whereas defendant no.1 claims

the same for herself exclusively. As far as the balance shares are concerned, it is agreed between the plaintiff and defendants 4 and 5 that the said shares be transmitted and de-materialised in the name of plaintiff. The Court Receiver as well as third defendant company to execute such documents and papers as are necessary for this purpose. The Court Receiver shall complete this exercise within a period of four weeks. It is also agreed between parties that insofar as 12660 debentures are concerned, the value thereof upon redemption would be disbursed and distributed as per shares of the plaintiff, defendants 4 and 5. It is agreed between plaintiff and defendants 4 and 5 that amounts on redemption be paid over to the plaintiff. As far as defendant no.1 is concerned, Mr.Angal states that he does not seek any disbursement at this stage. The Court Receiver to retain the amount in respect of 1583 debentures belonging to estate and shall seek further directions from this Court in that behalf.

13. The above order is without prejudice to the rights and contentions of both sides. The Court Receiver shall submit a report after a period of

eight weeks from today and enlist therein the steps taken with regard to the disbursement as above.

14. Notice of Motion is not pressed insofar as other reliefs are concerned. However, Mr.Shah states that directions be given to the first defendant to disclose on affidavit full estate of the deceased including details of the assets received, utilised and/or appropriated by her. Mr.Anagal states that affidavit in reply filed in this Notice of Motion on 25th October 2001 gives the details of all such assets and their adjustments and appropriation and excluding this, if there is any other estate of the deceased received and/or utilised as well as appropriated by the first defendant, the same shall be placed on affidavit within a period of four weeks from today.

15. Mr.Anagal states that first and second defendants have yet to file their written statement. He seeks some time for that purpose. Written statement be filed within a period of one week from today. This direction would apply to those defendants who have yet to file their written statement. Since this is a suit for

administration of the estate of deceased and some of the parties are of advanced age, hearing of the suit is expedited.

(S.C.DHARMADHIKARI, J.)